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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/618,887	07/14/2003	Steven J. Tallarida	STD 00.01 CIPD	5876
32047 7590 01/15/2008 GROSSMAN, TUCKER, PERREAULT & PFLEGER, PLLC 55 SOUTH COMMERICAL STREET MANCHESTER, NH 03101			EXAMINER PHILOGENE, PEDRO	
			ART UNIT 3733	PAPER NUMBER
			MAIL DATE 01/15/2008	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/618,887	Applicant(s) TALLARIDA ET AL.	
	Examiner Pedro Philogene	Art Unit 3733	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 29 October 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 12,14-22,81-84 and 86-90 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 12,14-22,81-84 and 86-90 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>10/29/07, 11/14/07, 11/19/07</u> . | 6) <input type="checkbox"/> Other: _____ |

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after allowance or after an Office action under *Ex Parte Quayle*, 25 USPQ 74, 453 O.G. 213 (Comm'r Pat. 1935). Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, prosecution in this application has been reopened pursuant to 37 CFR 1.114. Applicant's submission filed on 10/29/07 has been entered.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 12, 14-22, 90 are rejected under 35 U.S.C. 103(a) as being unpatentable over Walrus et al. (5,595,193) in view of Selmon et al. (6,217,549).

With respect to claims 12, 22, Walrus et al disclose a guide device, comprising a first element (70) comprising a shaft (72) having a longitudinal axis and a contact surface (22,60) mounted to a shaft, as best seen in FIG.1, a second element (12) comprising a second contact portion having a contact surface (14) the contact surface of the second element movable along the longitudinal axis with respect to the contact surface of the first element; as best seen in FIG.4; the longitudinal axis being oriented

substantially normal to a non-spherical articular surface when both contact surfaces make contact with the articular surface; as best seen in FIG.4; wherein the contact surface comprises an arcuate section of a generally "scalloped" member, wherein the generally scalloped member is formed when contact surfaces make contact with a locally spherical articular surface

With respect to claims 15-22, Walrus et al disclose all the limitations; as claimed by applicant; for example the contact surfaces could be adapted to make contact with a plurality of points along either one of the AP or ML curves of an articular surface, the elements are both cannulated, and adapted to receive a tool or guide pin and surrounds a defect in an articular surface, and comprises a set of arms.

It is noted that Walrus did not teach of a plurality of arcuate sections of a generally toroidal member, as claimed by applicant. However, in similar art, Selmon et al evidence the use of device with a plurality of arcuate surfaces that could be formed of a variety of configurations including cylindrical, toroidal, or spherical, and may have one or more shaped surfaces to communicate with another complementary surface.

Therefore, given the teaching of Selmon, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the device of Walrus, as taught by Selmon et al to communicate with another complementary surface.

Claims 12, 14-22, 90 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mc Arthur (6,342,075) in view of Walrus et al. (5,595,193).

With respect to claims 81-84,86-89, Mac Arthur discloses a method comprising a establishing an axis generally normal to the portion of the articular surface of a bone to be replaced; as best seen in FIGS. 8 a-d; excising only a portion of the articular surface adjacent to the axis, to create implant site, as best seen in FIG.8a, one of selecting an artificial implant corresponding to dimensions of the implant site from the set of variously-sized artificial implants, fabricating an artificial implant corresponding to the dimension of the implant site; and installing the implant into the implant site; asset forth in 13, lines 10-67, column 14, lines 1-67, column 15, lines 1-67, column 16, lines 1-40; and as best seen in FIGS.1-9.

It is noted that Mc Arthur did not teach of a first element comprising an aiming feature and a first contact surface mounted to a shaft and a second element comprising a second contact surface movable relative to the first contact, as claimed by applicant. However, in a similar art, Walrus et al evidence the use of a device with first element comprising an aiming feature and a second element comprising a second contact surface movable relative to the first contact surface to provide a guide for insertion of an implant.

Therefore, given the teaching of Walrus et al., it would have been obvious to one having ordinary skill in the art at he time the invention was made to modify the device of Mc Arthur, as taught by Walrus et al., to provide a guide for insertion of an implant.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Application/Control Number:
10/618,887
Art Unit: 3733

Page 5

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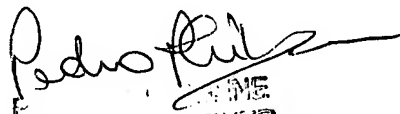
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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Pedro Philogene whose telephone number is (571) 272-4716. The examiner can normally be reached on Monday to Friday 6:30 AM to 4:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eduardo Robert can be reached on (571) 272 - 4719. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Pedro Philogene
January 11, 2008



PEDRO PHILOGENE
EXAMINER